**Section 848.APPENDIX A Financial Assurance Forms**

**Section 848.ILLUSTRATION A Trust Agreement**

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **TRUST AGREEMENT** | | | | | | | | | | | | | | | | | | |
| Trust Fund Number | | | | |  | | | |  | | | | | | | | | |
| Trust Agreement, the "Agreement," entered into as of the | | | | | | | | | | (day of month) | | | | | | | day of | |
|  | (month and year) | | , by and between | | | | | (name of the owner or operator) | | | | | | | | | | , a/an |
|  | (name of State) |  | | ("corporation," "partnership," "association" or "proprietorship") | | | | | | | | | , the "Grantor," and | | | | | |
| (Name of corporate trustee) | | | | | , | ("incorporated in the State of \_\_\_\_\_\_\_\_\_\_\_" | | | | or | "a national bank") | | | | , the "Trustee." | | |
|  | | | | | | | | | | | | | |  |

Whereas the Illinois Pollution Control Board (IPCB) has established certain regulations applicable to the Grantor, requiring that an owner or operator of a used or waste tire storage or disposal site provide assurance that funds will be available when needed for removal of used and waste tires from the site.

Whereas the Grantor has elected to establish a trust to provide all or part of such financial assurance for the sites identified in this Agreement, and/or to serve as a standby trust fund.

Whereas the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this Agreement, and the Trustee is willing to act as trustee.

Whereas Trustee is an entity which has authority to act as a trustee and whose trust operations are regulated by a state or federal agency.

Now, Therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Sites and Cost Estimates. This Agreement pertains to the sites and cost estimates identified on attached Schedule A (on Schedule A, list the name and address, and the current cost estimate, or portions thereof, of each site for which financial assurance is demonstrated by this Agreement).

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the Illinois EPA. The Grantor and the Trustee intend that no other third party have access to the Fund except as provided in this Agreement. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B to this Agreement. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits on the Fund, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, in trust, as provided in this Agreement. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the Illinois EPA.

Section 4. Payment for Removal. The Trustee shall make payments from the Fund as the Illinois EPA shall direct, in writing, to provide for the payment of the costs of removal at the sites covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the Illinois EPA from the Fund for removal expenditures in such amounts as the Illinois EPA shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the Illinois EPA specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that;

(a) Securities or other obligations of the Grantor, or any other owner or operator of the sites, or any of their affiliates as defined in Section 80a-2(a) the Investment Company Act of 1940, as amended (15 U.S.C. 80a-2(a)), shall not be acquired or held, unless they are securities or other obligations of the Federal government or a state government;

(b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of federal or state government.

(c) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) including one which may be created, managed, underwritten or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expedience of any such sale or other disposition;

(b) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers granted in this Agreement;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depositary even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depositary with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of federal or state government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation. The Trustee shall annually furnish to the Grantor and to the Illinois EPA a statement confirming the value of the Trust. The evaluation day shall be

each year on the (day of month) day of (month) . Any securities in the Fund shall be valued at market value as of the evaluation day. The Trustee shall mail the evaluation statement to the Grantor and the Illinois EPA within 30 days after the evaluation day. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the Illinois EPA shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the Illinois EPA and the present Trustee by certified mail ten days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Illinois EPA to the Trustee shall be in writing, signed by the Illinois EPA Director or the Director's designees, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or IEPA hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests and instructions from the Grantor and/or Illinois EPA, except as provided in this Agreement.

Section 15. Notice of Nonpayment. The Trustee shall notify the Grantor and the Illinois EPA, by certified mail within ten days following the expiration of the 30-day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during the period. After the pay-in period is completed, the Trustee shall not be required to send a notice of nonpayment.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee and the Illinois EPA Director, or by the Trustee and the Illinois EPA Director if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee and the Illinois EPA Director, or by the Trustee and the Illinois EPA Director, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Illinois EPA Director issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed and enforced according to the laws of the State of Illinois.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement was not modified or altered in any way other than as intended to complete the Agreement.

|  |  |  |  |
| --- | --- | --- | --- |
| State of | | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_) |  |
|  | ) | SS |
| County of | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_) |  |

|  |  |  |
| --- | --- | --- |
| Attest: | | Signature of |
| Grantor |  | |
|  | | |
| Typed |  | |
| Name |  | |
|  | | |
| Title |  | |
|  | | |
| Seal |  | |
|  | | |
| Attest: | Signature of | |
| Trustee |  | |
|  | | |
| Typed |  | |
| Name |  | |
|  | | |
| Title |  | |
|  | | |
| Seal |  | |

(Source: Amended at 39 Ill. Reg. 12934, effective September 8, 2015)

**Section 848.APPENDIX A Financial Assurance Forms**

**Section 848.ILLUSTRATION B Surety Bond Guaranteeing Payment**

**Surety Bond Guaranteeing Payment**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Date bond executed: | |  | | |
| Effective date: | |  | | |
| Principal: | |  | | |
| Type of Organization: | |  | | |
| State of incorporation: | |  | | |
| Surety(ies): | |  | | |
|  | | | |
|  | | | |
|  | | | |
|  | | | |
|  | | | Removal Amount |  |
| Illinois EPA I.D. No. | |  | | |
| Name | |  | | |
| Address | |  | | |
| City | |  | | |
| Illinois EPA I.D. No. | |  | | |
| Name | |  | | |
| Address | |  | | |
| City | |  | | |

Please attach a separate page if more space is needed for all facilities.

|  |  |
| --- | --- |
| Total penal sum of bond:  $ |  |
| Surety's bond number: |  |

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the Illinois Environmental Protection Agency (hereinafter called Illinois EPA), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas, the Illinois Pollution Control Board (IPCB), has established certain regulations applicable to the Principal, requiring that an owner or operator of a used or waste tire storage or disposal site provide assurance that funds will be available when needed for removal of used and waste tires from the site; and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance.

The bond must guarantee that the Principal will perform removal in accordance with the removal plan and guarantee that, within 90 days after receipt by both the Principal and the Illinois EPA of a notice of cancellation of the bond from the Surety(ies), provide alternate financial assurance in accordance with 35 Ill. Adm. Code 848, Subpart D and obtain the Illinois EPA's written approval of the assurance provided.

The surety will become liable on the bond obligation when, under the term of the bond, the owner or operator fails to perform as guaranteed by the bond. The owner or operator fails to perform when the owner or operator does any one or more of the following:

A) abandons the site;

B) is adjudicated bankrupt;

C) within 30 days after the date on which the known final volume of used or waste tires is received, either (i) fails to complete removal or (ii) fails to submit a removal plan that is approved by the Illinois EPA in accordance with 35 Ill. Adm. Code 848.506;

D) fails to initiate removal when ordered to do so by the IPCB pursuant to Title VIII of the Illinois Environmental Protection Act, or when ordered to do so by a court of competent jurisdiction;

E) fails to complete removal in accordance with the approved removal plan; or

F) fails, within 90 days after receipt by both the owner or operator and the Illinois EPA of a notice of cancellation of the surety bond, to provide alternate financial assurance and obtain the Illinois EPA's written approval of the assurance provided.

If the Principal provides alternate financial assurance, as specified in 35 Ill. Adm. Code 848, Subpart D as applicable, and obtains the Illinois EPA Director's written approval of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and the Illinois EPA from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the Illinois EPA Director that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the Illinois EPA Director.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the Illinois EPA Director, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the Illinois EPA Director, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the Illinois EPA Director.

(The following paragraph is an optional rider that may be included but is not required.)

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new removal amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the Illinois EPA Director.

In Witness Whereof, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond was not altered or modified in any way other than as intended to complete the surety bond.

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Principal Signature(s) | |  | | | | | |
| Name(s) | |  | | | | | |
| Title(s) | |  | | | | | |
| Corporate seal | |  | | | | | |
| Corporate Surety(ies) | |  | | | | | |
| Name | |  | | | | | |
| Address | |  | | | | | |
| State of incorporation: | |  | | | | | |
| Liability limit: | | $ | | | | | |
| Signature(s) | |  | | | | | |
| Name(s) | |  | | | | | |
| Title(s) | |  | | | | | |
| Corporate seal | |  | | | | | |
| Co-surety(ies) | |  | | | | | |
| Name | |  | | | | | |
| Address | |  | | | | | |
| State of incorporation: | |  | | | | | |
| Liability limit: | | $ | | | | | |
| Signature(s) | |  | | | | | |
| Name(s) | |  | | | | | |
| Title(s) | |  | | | | | |
|  | |  | | | | | |
| Bond premium: | | $ | | |  |
|  |  | | of |  | | |  | |
|  |  | |  |  | | | | |

(Source: Old Appendix A, Illustration B repealed, and new Appendix A, Illustration B added, at 39 Ill. Reg. 12934, effective September 8, 2015)

**Section 848.APPENDIX A Financial Assurance Forms**

**Section 848.ILLUSTRATION C Irrevocable Standby Letter of Credit**

Director

Illinois Environmental Protection Agency

c/o Bureau of Land #24

Financial Assurance Program

1021 North Grand Ave. East

PO Box 19276

Springfield IL 62794-9276

Dear Sir or Madam:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| We hereby establish our Irrevocable Standby Letter of Credit No. | | | |  | | |
| in your favor, at the request and for the account of | |  | | | | |
| up to the aggregate amount of |  | | U.S. dollars ($ | |  | ), | |
| available upon presentation of | | | | | | | |

|  |  |  |  |
| --- | --- | --- | --- |
| 1. | your sight draft, bearing reference to this letter of credit No. |  | ; and |
|  | | | |
| 2. | your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of the Environmental Protection Act [415 ILCS 5]." | | |
|  |
|  |

|  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| This letter of credit is effective as of | | | | | |  | | | | and shall expire on | |
|  | | | , but such expiration date shall be automatically extended for a | | | | | | | | |
| period of | |  | | | | | on |  | | | and on each |
| successive expiration date, unless, at least 120 days before the current expiration date, | | | | | | | | | | | |
| we notify both you and | | | | |  | | | | | | |
| by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by | | | | | | | | | | | |
| both you and | | |  | | | | | | as shown on the signed return receipts. | | |

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in accordance with your instructions.

We certify that the wording of this letter of credit was not altered or modified in any way other than as intended to complete the letter of credit.

|  |  |
| --- | --- |
| Signature | |
|  | |
|  | |
| Name | |
|  | |
|  | |
| Title | |
|  | |
|  | |
| Date | |
|  | |
|  | |
| Name and address of issuing institution | |
|  | |
|  | |
|  | |
| This credit is subject to |  |
|  | |
|  | |

(Source: Amended at 39 Ill. Reg. 12934, effective September 8, 2015)

**Section 848.APPENDIX A Financial Assurance Forms**

**Section 848.ILLUSTRATION D Owner or Operator's Bond Without Surety (Repealed)**

(Source: Repealed at 39 Ill. Reg. 12934, effective September 8, 2015)

**Section 848.APPENDIX A Financial Assurance Forms**

**Section 848.ILLUSTRATION E Owner or Operator's Bond With Parent Surety (Repealed)**

(Source: Repealed at 39 Ill. Reg. 12934, effective September 8, 2015)

**Section 848.APPENDIX A Financial Assurance Forms**

**Section 848.ILLUSTRATION F Letter from Chief Financial Officer (Repealed)**

(Source: Repealed at 39 Ill. Reg. 12934, effective September 8, 2015)